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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/787,452	07/13/2001	Scott William Capeci	7628/DQ	2162

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EXAMINER
DOUYON, LORNA M

ART UNIT	PAPER NUMBER
1751	6

DATE MAILED: 12/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-6

Office Action Summary	Application No.	Applicant(s)	
	09/787,452	CAPECI ET AL.	
	Examiner	Art Unit	
	Lorna M. Douyon	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 July 2001* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *5* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

Claim Objections

1. Claims 4, 7 and 10 are objected to because of the following informalities:

In claim 4, line 2, "having" should be replaced with "have".

In claims 7 and 10, line 2 of each, "if" after "deviation" should be replaced with "is".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 13 are indefinite in the recital of "selected detergent ingredient" because it is not clear what is being selected. In addition, in claim 13, line 6, the Markush language is improper. The phrase "the group consisting of" should be added after "selected from". See MPEP 2173.05(h)(I). Also, in claim 13, line 6, "low speed" and "low shear" read upon one another and therefore do not meet the requirements of 35 U.S.C. § 112, second paragraph, see *Ex parte Ferm, 162 USPQ 504 (BPAI 1968).* Lastly, the phrase "the concentration of the discrete area" (two occurrences for each of claims 1 and 13) is not understood. Or, does it mean the volume of the discrete area?

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-2, 4, 6-7, 9-14 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Heinzman et al. (WO 98/35004), hereinafter "Heinzman".

Heinzman teaches granular detergent compositions having a bulk density of at least 570 g/l wherein the particle size of the components is such that no more than 15% of the particles or components are greater than 1.8 mm in diameter and not more than 15% of the particles are less than 0.25 mm in diameter, preferably the mean particle size is such that from 10% to 50% of the particles has a particle size from 0.2 mm to 0.7 mm in diameter (see page 48, lines 1-2, 11-16). In

Example 5, Heinzman teaches a detergent formulation comprising 22.8% of blown powder containing 3.0% LAS and 32.4% of agglomerates containing a total of 9.4% surfactants. Based on the level of the surfactants in the blown powder and agglomerates, the granular detergent composition should have a homogeneity number within those recited. Even though Heinzman does not explicitly disclose the geometric standard deviation and aspect ratio of the particle sizes, it would be inherent for the granular detergent composition of Heinzman to have these properties because same composition having overlapping particle sizes have been utilized. Hence, Heinzman anticipates the claims.

6. Claims 1, 2, 4, 6, 7, 9-14, 17-18 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Dinniwell et al. (US Patent No. 5,569,645), hereinafter "Dinniwell".

Dinniwell teaches a detergent composition which comprises from about 40% to about 80% by weight of spray dried detergent granules; from about 20% to about 60% by weight of detergent agglomerates; and from about 1% to about 20% by weight of adjunct ingredients, the composition has a density of at least about 650 g/l (see abstract), and a uniform distribution of the desired particle size, 400-700 microns (see col. 17, lines 39-41). In Example I, Dinniwell teaches the preparation of the composition by admixing 39 wt% agglomerates with 50.5 wt% spray dried granules and additional liquid ingredients are sprayed on to form the finished composition, the agglomerates comprises a total of 30% by weight of surfactants and the spray dried granules

comprises a total of 10% by weight of surfactants (see col. 18, lines 1-50). Based on the level of surfactants in the spray dried granules and agglomerates, the detergent composition should have a homogeneity number within those recited. Even though Dinniwell does not explicitly disclose the geometric standard deviation and aspect ratio of the particle sizes, it would be inherent for the granular detergent composition of Dinniwell to have these properties because same composition having overlapping particle sizes have been utilized. Hence, Dinniwell anticipates the claims.

7. Claims 3, 5, 8, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dinniwell as applied to the above claims.

Dinniwell teaches the features as described above. In addition, Dinniwell teaches agglomeration in a high speed mixer/densifier followed by a moderate speed mixer/densifier (see col. 16, lines 45-52), or high speed mixer/densifier followed by a low speed mixer/densifier, or the reverse (see col. 17, lines 19-22). Dinniwell , however, fails to disclose (1) a homogeneity number greater than about 1.25; the particles comprising at least about 75% or about 90% by weight, and (2) passing the feed stream through a moderate speed mixer prior to passing through a low shear mixer.

With respect to difference (1), it would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the proportions of the proportions of the spray dried granules and agglomerates in the composition of Dawson through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the

optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch,* 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

With respect to difference (2), it would have been obvious to one of ordinary skill in the art at the time the invention was made to pass the feed stream through a moderate speed mixer prior to passing through a low shear mixer because Dinniwell teaches that agglomeration is accomplished in high speed mixer/densifier followed by a low speed mixer/densifier, the high speed mixer being equivalent to the moderate speed mixer inasmuch as there are no clear distinctions to distinguish these relative terms.

8. The prior art made of record and not relied upon is considered pertinent to applicants' disclosure. The references are considered cumulative to or less material than those discussed above.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (703) 305-3773. The examiner can normally be reached on Mondays-Fridays from 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for this Technology Center is:

(703) 872-9311 - for Official After Final faxes
(703) 872-9310- for all other Official faxes.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center receptionist whose telephone number is (703) 308-0661.

Lorna M. Douyon

Lorna M. Douyon
Primary Examiner
Art Unit 1751

December 2, 2002